

## Message Text

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ACTION EUR-25

INFO OCT-01 ADP-00 CIAE-00 PM-09 INR-10 L-03 NEA-10

NSAE-00 PA-03 RSC-01 PRS-01 GAC-01 USIA-12 TRSE-00

MBFR-03 SAJ-01 DODE-00 SS-15 NSC-10 ACDA-19 OMB-01

IO-12 RSR-01 /138 W

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C O N F I D E N T I A L USNATO 2457

E. O. 11652: GDS, 12-31-79

TAGS: PFOR

SUBJECT: EXPERTS' STUDY OF SWISS PROPSAL ON JUSTICIABLE DISPUTES

REF: USNATO 2290

1. THERE FOLLOWS TEXT OF REPORT WHICH EMERGED FROM MEETING OF NATO EXPERTS ON SWISS PROPOSAL FOR A EUROPEAN SYSTEM FOR PEACEFUL SETTLEMENT OF DISPUTES. IT WILL BE DISCUSSED IN POLADS ON WEDNESDAY, MAY 23. DEPARTMENT'S COMMENTS WOULD BE WELCOME.

2. BEGIN TEXT

NATIONAL EXPERTS MET AT NATO HEADQUARTERS ON 8 TH AND 9 TH MAY, 1973, TO CONSIDER CERTAIN LEGAL ASPECTS OF THE SWISS PROPOSAL FOR A EUROPEAN SYSTEM FOR THE PEACEFUL SETTLEMENT OF DISPUTES AND TO ATTEMPT TO ESTABLISH A COMMON ALLIED POSITION WITH RESPECT TO THIS PROPOSAL. THE EXPERTS TOOK AS THEIR STARTING POINT DOCUMENT POLADS(73)13 WHICH SETS OUT THE PRELIMINARY VIEWS OF A NUMBER OF DELEGATIONS ON THE SUBJECT. THEY CONCLUDED THAT OF THE EIGHT QUESTIONS PUT FORWARD BY THE CONFIDENTIAL

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UNITED STATES, TWO WERE OF FUNDAMENTAL INTEREST. THESE WERE FIRSTLY, THE JURISDICTION OF THE BODY SUGGESTED IN THE SWISS PROPOSAL AND THE TYPES OF DISPUTE WHICH COULD BE BROUGHT BEFORE IT AND, SECONDLY, THE AUTONOMY OR OTHERWISE OF THAT BODY. THEY

ACCORDINGLY MADE A DETAILED COMPARATIVE STUDY OF THE POSITIONS ADOPTED IN THIS CONNECTION IN THE DIFFERENT CAPITALS.

2. AS REGARDS THE TYPE OF DISPUTE WHICH COULD BE SUBMITTED TO THE PROPOSED BODY, THREE MAIN POINTS REMAINED UPPERMOST DURING THE DISCUSSION.

ALTHOUGH CERTAIN DELEGATIONS THOUGHT THAT ALL LEGAL DISPUTES WITHOUT DISTINCTION SHOULD BE SUBMITTED TO THE ARBITRATION TRIBUNAL, THERE WAS A GENERAL TENDENCY IN FAVOUR OF LIMITING THE COMPULSORY JURISDICTION OF THE TRIBUNAL TO DISPUTES OF A JURIDICAL NATURE RELATING TO THE INTERPRETATION AND APPLICATION OF THE INTERNATIONAL TREATIES AND AGREEMENTS ARISING OUT OF A CSCE.

VIEWS, HOWEVER, DIFFERED AS TO WHAT SHOULD BE DONE ABOUT DISPUTES RELATING TO POLITICAL QUESTIONS AND MATTERS OF DEFENCE OR SECURITY. SEVERAL DELEGATIONS THOUGHT THAT THESE SHOULD BE EXCLUDED FROM THE COMPULSORY JURISDICTION OF THE TRIBUNAL.

THE GENERAL FEELING WAS THAT DISPUTES ARISING OUT OF THE INTERPRETATION OF ANY DECLARATION OF PRINCIPLE GOVERNING RELATIONS BETWEEN STATES MUST BE EXCLUDED. THIS WAS BECAUSE OF THE RISK THAT JURISDICTION OVER SUCH MATTERS MIGHT LEAD TO CASES NOT BASED ON JURIDICAL DISPUTES.

3. AS REGARDS THE CREATION OF NEW JURIDICAL MACHINERY WITHIN THE CONTEXT OF THE SWISS INITIATIVE, DESPITE THE JURIDICAL AND PRACTICAL DIFFICULTIES INHERENT IN SUCH A SOLUTION, THE MAJORITY OF DELEGATIONS WERE IN FAVOUR OF RECOURSE TO EXISTING INSTITUTIONS AND ABOVE ALL TO THE INTERNATIONAL COURT OF JUSTICE. THE REVISION OF THE STATUTE OF THE COURT, CARRIED OUT IN 1972, WOULD ALLOW FOR GREATER FLEXIBILITY IN THIS RESPECT, PARTICULARLY BY ITS PROVISION FOR THE CONSTITUTION OF CHAMBERS TO HEAR SPECIFIC CATEGORIES OF CASES OR OF AD HOC CHAMBERS TO HEAR A PARTICULAR CASE.  
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IN THIS CONNECTION, IT WAS IN PARTICULAR FELT THAT CARE MUST BE TAKEN, GIVEN THE UNCERTAINTY SURROUNDING THE JURISDICTION OF SUCH A BODY, THE RESULTS OF A CSCE BEING A MATTER FOR CONJECTURE, TO AVOID BEING CAUGHT UP IN A PROCESS LEADING TO THE CREATION OF A NEW BODY WHICH INEVITABLY WOULD HAVE SOME DEGREE OF PERMANENCE.

THE ARRANGEMENTS MENTIONED IN CONNECTION WITH THE CREATION, AS A SUPPLEMENTARY COURT, OF AN AUTONOMOUS BODY WHICH SHOULD NOT IN ANY EVENT ENCROACH UPON THE JURISDICTION OF THE ICJ, MAINLY STEMMED FROM DOUBTS, WITH REGARD TO, FIRST, THE APPLICABILITY OF ARTICLE 26 OF THE STATUTE OF THE COURT, SECOND, THE PROSPECTS FOR THE CREATION OF A PERMANENT REGIONAL

CHAMBER AND, THIRD, THE COMPOSITION OF SUCH A CHAMBER.  
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